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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1953**

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# No. 194

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HYDROCARBON PRODUCTION COMPANY, INCORPORATED,

*Petitioner,*

*vs.*

VALLEY ACRES WATER DISTRICT, ET AL.

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on April 27, 1953 (R. 65), affirming the judgment of the District Court of the United States for the Southern District of Texas in favor of Respondents (R. 32, *et seq.*) and dismissing Plaintiff's complaint.

## Opinions Below

The memorandum opinion of the District Court appears in the record (R. 32, *et seq.*). The opinion of the Court of Appeals is reported at 204 F. 2d 212, *et seq.* (R. 55, *et seq.*).

## Jurisdiction

The judgment of the Court of Appeals was entered April 27, 1953 and rehearing was denied on May 25, 1953 (R. 69). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). The Court of Appeals has decided a Federal question in conflict with applicable decisions of this Court, particularly *Myles Salt Company* v. *Iberia & St. M. Drainage District*, 239 U. S. 478, 484, 485, 60 L. Ed. 392, 396, 36 S. Ct. 204, and the other decisions mentioned below.

## Question Presented

The sole question presented is:

Whether, since under the admitted facts, Petitioner's properties will not be benefited in any degree, directly or indirectly, by the proposed irrigation facilities, and the Legislature of Texas acted arbitrarily and grossly abused its discretion in making a finding of benefits and in authorizing the imposition of annual taxes upon Petitioner's properties which are palpably wrong and wholly unwarranted, constitutes confiscation of Petitioner's properties without due process of law contrary to the Fourteenth Amendment.

## Statute Involved

The Act creating Valley Acres Water District appears at Page 418, Chapter 261, Session Laws of the 52nd Legislature of Texas, 1951, and may be found in Volume 21, Page 279, *et seq.*, of the 1952 Pocket Part of Vernon's Annotated Revised Civil Statutes of Texas. Since this statute is summarized and the pertinent parts are copied in the opinion of the Court of Appeals, recopying here is omitted.

## Statement

By filing a motion to dismiss, which was sustained by the District Court and affirmed by the Court of Appeals, Re-

spondents admit all of the facts alleged in the complaint as construed most favorably to Petitioner. With a few omissions, these admitted facts are summarized in the opinion of the Court of Appeals. The complaint appears at R. 2-14.

The Executors of the Estate of Roger Lacy, deceased, about the year 1949, sold approximately ten thousand acres of land owned by the Estate in Hidalgo and Cameron Counties, Texas, in three parts as follows (R. 20):

> The surface estate and certain mineral royalties were sold to a corporation controlled by Toddie Lee Wynn, of Dallas, Texas;
>
> An irrigation system serving a portion of said tract of land was sold to another corporation controlled by Mr. Wynn; and
>
> The leasehold estate in all oil, gas and other minerals was sold to Petitioner, Hydrocarbon Production Co., Inc., a Delaware corporation, created by a Houston group for the express purpose of purchasing and developing such leasehold estate.

Some two years later, Wynn and his associates "lobbied" through the Texas Legislature a Bill creating Valley Acres Water District, an irrigation district, composed of Wynn's land and a few small tracts adjacent thereto, totalling 10,202.58 acres. (See Section 1 of Special Act) (R. 20-21).

The Legislature found that "all of the land included therein will be benefited thereby" (R. 57). This finding is contrary to the facts, is not supported by substantial evidence, is palpably wrong and the Legislature of Texas acted arbitrarily and grossly abused its legislative discretion in making the finding (R. 4). Petitioner's leasehold estate in the oil, gas and other minerals is not the type of property which is susceptible of irrigation and is not now, and can never be, benefited in any degree by whatever

irrigation facilities Respondent District may construct or acquire (R. 7).

Respondent District has taken steps to issue $1,000,000 bonds to purchase the existing irrigation system from Wynn's corporation and to extend irrigation facilities to the unirrigated portion of Wynn's land (R. 5). Its governing body has adopted resolutions purporting and attempting to levy taxes upon all taxable property within the District, including the property of Petitioner, to pay principal and interest on said bonds, said taxes to be collected annually in each of the years 1951 through 1982, or until said bonds are finally paid. Respondents are threatening to, and will unless restrained, enforce the collection of such taxes by foreclosing a purported tax lien on Petitioner's property and causing such property to be sold to satisfy said purported tax lien (R. 5-6).

**Reasons for Granting the Writ**

The decision of the Court of Appeals is directly in conflict with the following decisions of this Court:

*Myles Salt Co.* v. *Iberia & St. M. Drainage District,* 239 U. S. 478, 60 L. Ed. 392, 36 S. Ct. 204;

*Gast Realty & Invest. Co.* v. *Schneider Granite Co.,* 240 U. S. 55, 60 L. Ed. 392, 36 S. Ct. 254;

*Kansas City Southern R. Co.* v. *Road Improvement District,* 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 254;

*Branson* v. *Bush,* 251 U. S. 189, 64 L. Ed. 220, 40 S. Ct. 113;

*Thomas* v. *Kansas City S. R. Co.,* 261 U. S. 481, 67 L. Ed. 758, — S. Ct. —;

*Wagner* v. *Leser,* 239 U. S. 207, 219, 60 L. Ed. 230, 237, 36 S. Ct. 66.

The controlling point overlooked by the District Court and the Court of Appeals is that in this case it is undis-

puted that the imposition of the tax upon Petitioner's property is palpably wrong, arbitrary, wholly unwarranted, and the Legislature of Texas grossly abused its discretion in authorizing it. The legislative finding of benefits to all taxable property within the taxing district, including Petitioner's subsurface mineral estate, is not supported by substantial evidence, is contrary to the facts, and runs counter to the very nature of such mineral estate which is located in the bowels of the earth thousands of feet below the surface and beyond the purview of irrigation, present or prospective. The subjection of this mineral estate, which was segregated from the surface estate long before the creation of the irrigation district, to the payment of irrigation taxes is solely for the purpose of benefitting Wynn's property without one single cent of benefit ever accruing to Petitioner's property. *These facts are admitted.*

This Court has uniformly held that such arbitrary exercise of the taxing power offends due process and constitutes confiscation. *Myles Salt Co.* v. *Iberia & St. M. Drainage District, Gast Realty & Invest. Co.* v. *Schneider Granite Co., Kansas City Southern R. Co.* v. *Road Improvement District, Branson* v. *Rush, Thomas* v. *Kansas City S. R. Co., Wagner* v. *Leser;* all *supra.* In the *Myles Salt Co.* case, it was held that a subsurface deposit of salt could not be benefitted by the drainage improvement of the local improvement district and that taxation of that deposit and the surface estate which also could not be benefitted, was arbitrary action and therefore unconstitutional. Said the Court (239 U. S. 485):

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for

the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner* v. *Leser*, supra. We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others,—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

In *Wagner* v. *Leser, supra*, the Court said (239 U. S. 219-220):

"We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of landowners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise."

The facts in this case reveal such a flagrant abuse of legislative power that intervention of a Court of equity to protect the constitutional rights of Petitioner is fully warranted. Justice and good conscience require it. The segregation of the mineral estate prior to the sale of the surface to Wynn and prior to the creation of the District; the removal of the irrigation system from taxation by sale to the District; the issuance of $1,000,000 bonds to finance the purchase (at an exorbitant price [R. 9]) of the system by the District from Wynn, and its extension to serve the remainder of Wynn's land; the trebling of the value of Wynn's land (R. 8) with no benefit whatever to Petitioner's property; the taxation of Petitioner's property

for the admitted and obvious purpose of benefitting Wynn's land; the failure of the District to evaluate or assess Petitioner's properties before the bonds are issued and the resultant inability of Petitioner to measure its tax liability to the District (which may exceed 50% of the total tax roll of the District) (R. 10-11); the conspiracy on the part of Wynn and associates to prevent Petitioner from being afforded a hearing before the committee of the Texas Senate on passage of the Bill creating the District and from being heard by the Directors of the District on the exclusion of Petitioner's properties from the taxing power of the District (R. 10); and the scheme and plan of Wynn to compel Petitioner to pay a large share of the cost of irrigating Wynn's land, *all of which are admitted,* are enough to shock the conscience of a court of equity and require the intervention of this court to protect Petitioner's property from this unwarranted and unconstitutional confiscation.

It is accordingly urged that a Writ of Certiorari to review the judgment of the Court below should be granted.

Respectfully submitted,

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